

EXHIBIT R

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE WIMBLEDON FUND, SPC (CLASS)
TT),)
)
PLAINTIFFS,)
)
VS.) CASE NO.
) 2:15-CV-6633-CAS-ASJWx
)
GRAYBOX LLC; INTEGRATED)
ADMINISTRATION; EUGENE SCHER, AS)
TRUSTEE OF BERGSTEIN TRUST; AND)
CASCADE TECHNOLOGIES CORP.,)
)
DEFENDANTS.)
)

VIDEOTAPED DEPOSITION OF KIARASH JAM

TAKEN ON

WEDNESDAY, MARCH 27, 2019

Sandra Mitchell
C.S.R. 12553

10:57:34 1 mistakenly trusted him.

2 Q So I take it it's your testimony that you only
3 consult attorneys when signing legal documents if you
4 believe there's something nefarious going on?

10:57:44 5 A No. In this particular case -- in this
6 particular case, I didn't think there was any reason to
7 consult lawyers. David would -- had a bunch of lawyers
8 that he was dealing with that were working on a number
9 of things with him, and I just assumed that these were
10:57:58 10 all already vetted by -- by legal staff and I didn't
11 need to do that.

12 Q Even though you were the signatory, you saw no
13 reason to secure independent legal advice to protect
14 your own individual interest?

10:58:11 15 A Unfortunately not.

16 MR. WIECHERT: Objection. Asked and answered
17 now a few times.

18 THE WITNESS: Sorry.

19 BY MR. WALKER:

10:58:16 20 Q Now, when you say, "Jeff, please make sure this
21 gets loaded up," what was that instructing Jeff to do?

22 A Just to load it up to, like, a, probably, box
23 or some place where the documents could be find because
24 there was a -- always a scramble to find documents. So

10:58:30 25 I was trying to be organized; trying to ask Keith to

10:58:33 1 countersign and send it back so we could have organized
2 files.

3 Q And you say, "I will file original."

4 Did I read that correctly?

10:58:41 5 A Yes.

6 Q Where were you filing it?

7 A These files I would probably give to David's
8 office. Frymi would -- was the keeper of kind of all
9 things in David's office. All the filing and stuff.

10:58:52 10 Q So she was down the hall from you?

11 A Yes, sir.

12 Q It was the same office you were located at?

13 A Yes, sir.

14 Q Okay. Let's go to the first page -- the second

10:59:00 15 page of this exhibit, sir, Page 282.

16 A Okay.

17 Q Do you see that?

18 A Yes, I do.

19 Q Okay. So this is the first page of a two-page

10:59:11 20 letter dated November 17, 2011; correct?

21 A Yes, sir.

22 Q And it's a letter that you signed on behalf of
23 Swartz IP Services, Inc.; correct?

24 A Yes, sir.

10:59:24 25 Q And your signature appears there on the second

10:59:26 1 page of the letter; correct?

2 A Yes, sir.

3 Q All right. And you were sending the letter to
4 Keith Wellner for WTT as defined below, whose title is
10:59:40 5 chief operating officer of Weston Capital Management;
6 correct?

7 A Yes, sir.

8 Q Now, the first paragraph states, "This letter
9 is to be read in conjunction with the note and NPA as
10:59:53 10 defined below."

11 Did I read that correctly?

12 A Yes.

13 Q Did you understand that to reference the
14 reference note that you signed?

10:59:59 15 A I did not read this letter.

16 Q Did you understand NPA to reference the note
17 purchase agreement that you signed?

18 MR. WIECHERT: No foundation.

19 THE WITNESS: I did not read this letter.

11:00:07 20 BY MR. WALKER:

21 Q The second sentence states, "The
22 representations made in this letter are a material
23 inducement to WTT, defined as Wimbledon Fund (Class TT),
24 who has relied on the representations contained herein
11:00:23 25 in making their decision to enter into that certain note

11:00:27 1 dated November 14, 2011."

2 Did I read that correctly?

3 A You did.

4 Q Now, when it says that these -- the

11:00:32 5 representations made in this letter are a material

6 inducement to WTT, do you recognize that to be the same
7 entity that is suing you in this lawsuit?

8 A Yes, I do.

9 Q And you understand that Class TT, the same

11:00:47 10 entity that's referenced in this correspondence, is

11 suing you in part for the documents that you executed on
12 behalf of Swartz IP?

13 A Yes, I do.

14 Q Going to the next section, it says, "Swartz IP

11:01:05 15 represents and warrants as follows."

16 And then there's a list of items; correct?

17 A Yes, sir.

18 Q Okay. The first item is "SIP maintains an

19 account at Deutsche Bank, Alex Brown in its name," and

11:01:16 20 provides an account number; correct?

21 A That's what it says.

22 Q Prior to signing this letter, did you engage in
23 any rudimentary diligence to determine whether or not
24 that account existed?

11:01:26 25 A I did not.

11:01:27 1 Q It goes on to state in Item 2, "Until such time
2 as that certain note -- and then I'll just cut down a
3 little bit -- has been repaid in full, Swartz IP agrees
4 to maintain the Deutsche Bank account and agrees not to
11:01:40 5 transfer funds out of the Deutsche Bank account other
6 than in accordance with the terms of this letter."

7 Did I read that correctly?

8 A Yes, you did.

9 MR. WIECHERT: Well, and you left out "the note
11:01:50 10 or the note purchase agreement dated November 14, 2011,
11 between WTT and SIP (NPA)."

12 MR. WALKER: I don't require any instructions
13 on how to ask a question. If you hadn't interpreted me,
14 I was going to go there.

11:02:06 15 MR. WIECHERT: Well, Counsel, when you refer to
16 one part of a sentence and leave out other significant
17 agreements in that sentence, at least based on the
18 sentence, it seems like the question is incomplete. So
19 I was trying to help you along there.

11:02:16 20 MR. WALKER: I don't require your assistance.
21 And it's only incomplete if I don't ask the next
22 question, at which point you could then make your point.

23 MR. WIECHERT: In this case, it would have
24 helped.

11:02:24 25 MR. WALKER: No, it would not have helped.

11:02:26 1 BY MR. WALKER:

2 Q Now, it goes on to also say that you agree not
3 to transfer funds out of the Deutsche Bank account in
4 accordance with the terms of the note; correct?

11:02:35 5 A That's what it says, yes.

6 Q It also goes on to say that you agree not to
7 transfer funds out of the Deutsche Bank account in
8 accordance with the terms of the note purchase
9 agreement; correct?

11:02:44 10 A And when you say "you," you mean SIP?

11 Q Yes.

12 A Okay. That's what it says, yes.

13 Q Okay. Did you understand by signing this
14 letter that you were committing Swartz IP to these
11:02:53 15 terms?

16 MR. WIECHERT: Calls for speculation. No
17 foundation.

18 THE WITNESS: I did not read this letter when I
19 signed it.

11:02:59 20 BY MR. WALKER:

21 Q Why is that?

22 A Again, as I told you, I trusted David at the
23 time. He said it's just part of ordinary course of
24 business. All this stuff is, I think, negotiated,
11:03:11 25 great. All the stuff we had to do, everybody seems

11:03:16 1 happy; Keith Wellner comes to the office, sits over
2 there, and no one's unhappy. I thought everything was
3 according to plan. He would send me the document and
4 say, please sign it right away, and I would sign it and
11:03:25 5 send it back to him.

6 Q Were --

7 A I didn't feel like I needed a lawyer. I
8 thought David was, you know, talking to the hundreds of
9 lawyers that he has employed or had at the time. And
11:03:34 10 that everything was done by the book. I wasn't even --
11 I didn't even -- I didn't even read the document.

12 Q Were the Class TT investors happy?

13 MR. WIECHERT: Calls for speculation. No
14 foundation.

11:03:46 15 THE WITNESS: I have no idea. I don't know who
16 they are. I've never interacted with them. I don't
17 know who, where, what, how. I've never had any
18 interaction with the investors of Class TT.

19 BY MR. WALKER:

11:03:57 20 Q And, again, when you're looking at this letter,
21 clearly it's a letter that you're signing on behalf of
22 Swartz IP that is making certain representations and
23 providing certain warrants; correct?

24 MR. WIECHERT: Letter speaks for itself.

11:04:11 25 THE WITNESS: Yes, the letter is making

11:04:13 1 representations, yes.

2 BY MR. WALKER:

3 Q And had you read the letter prior to signing
4 it, you would be aware of its terms; correct?

11:04:18 5 A Yes.

6 Q And was there any instruction from
7 Mr. Bergstein not -- for you not to secure the benefit
8 of Mr. Solomon's advice, as a friend and as an attorney
9 that you knew, with respect to the ramifications of your
11:04:32 10 signing this on behalf of Swartz IP?

11 A No.

12 Q Was there any instruction from Mr. Bergstein
13 not to retain the advice of Mr. Zarrinkelk, your friend
14 and it financial advisor of many years?

11:04:42 15 A No.

16 Q You just made a voluntary decision not to
17 consult or secure advice from either Mr. Solomon or
18 Mr. Zarrinkelk with respect to your signature on this
19 letter; correct?

20 A I made a decision to trust that David was doing
21 everything by the book and always as he said.

22 Q Yes, sir. But affirmatively, you made a
23 decision also not to consult any advice from Mr. Solomon
24 or Mr. Zarrinkelk; correct?

25 MR. WIECHERT: Assumes facts not in evidence.

11:05:05 1 THE WITNESS: Yes. That is correct. I -- as I
2 said, I didn't feel a need to do that. I thought
3 David's got it all. He's a really smart guy. He's
4 talked to all the lawyers. He's the one dealing with
11:05:15 5 all this stuff. And if I need to sign this, it's
6 because it needs to be signed and everything is good.

7 BY MR. WALKER:

8 Q But there was no barrier preventing you from
9 securing advice from either Mr. Solomon or

11:05:23 10 Mr. Zarrinkelk --

11 A Yes.

12 Q -- at any time prior to your signature of this
13 letter; correct?

14 MR. WIECHERT: Asked and answered.

11:05:29 15 Argumentative.

16 THE WITNESS: Yes.

17 BY MR. WALKER:

18 Q There was no barrier?

19 A There was no barrier.

11:05:35 20 Q Now, Item 3 says, "Upon receipt of
21 \$12.5 million from WTT, Swartz IP agrees to make the
22 following distributions."

23 Now, one is for slightly more than \$3 million
24 to Partners Fund; correct?

11:05:47 25 A That's what it says.

11:05:48 1 Q What was Partners Fund?

2 A I don't know.

3 Q What was the purpose of that \$3 million
4 transfer of the Class TT money?

11:05:55 5 A I don't know.

6 MR. WIECHERT: Calls for speculation. No
7 foundation.

8 THE WITNESS: Sorry.

9 I don't know.

11:06:01 10 BY MR. WALKER:

11 Q The next distribution referenced is one for
12 just under \$4.5 million to or as directed by Pineboard
13 Holdings.

14 Did I read that correctly?

11:06:11 15 A Yes, you did.

16 Q And what was Pineboard Holdings?

17 A Pineboard Holdings was a company that was set
18 up as an investment vehicle right -- by -- right around
19 the time that the Weston guys kind of showed up. They
11:06:25 20 put some money into it and the money was used for
21 various, you know, deals and various overhead and
22 payroll and things of that sort.

23 Q What was your position in relation to Pineboard
24 Holdings?

11:06:37 25 A I was an officer. I don't remember what

11:06:39 1 specifically.

2 Q So this letter was providing an almost
3 \$4.5 million distribution of Class TT's investment funds
4 to a company which you held a financial interest?

11:06:50 5 MR. WIECHERT: Calls for a conclusion.

6 THE WITNESS: I held --

7 MR. WIECHERT: No foundation.

8 THE WITNESS: I held the -- I held an office
9 and I helped run it, yes.

11:06:56 10 BY MR. WALKER:

11 Q Now, going to Item 5B.

12 A Okay.

13 Q SIP agreed to either -- well, let's look at A
14 and B. Going to Item 5 on Page 282.

11:07:13 15 A I see it.

16 Q "From the proceeds of the note." Did you
17 understand the proceeds of the note would be the funds
18 that Class TT was investing?

19 MR. WIECHERT: Calls for speculation. No

11:07:21 20 foundation.

21 THE WITNESS: I did not read the document, so I
22 did not have an understanding of it at the time.

23 BY MR. WALKER:

24 Q Looking at 5A, Swartz IP agreed to "either
11:07:29 25 invest the sum of 12.5 million in securities to be held